

## Message Text

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TO ALL AMERICAN REPUBLIC DIPLOMATIC POSTS

C O N F I D E N T I A L STATE 114202

STADIS////////////////////////////////////

E.O. 11652: GDS

TAGS: BBAK, HO, VE, BO

SUBJECT: BRIBERY OF FOREIGN OFFICIALS BY US CORPORATIONS

1. AS ADDRESSEES ARE AWARE, INCREASING PUBLICITY IN RECENT WEEKS HAS BEEN GIVEN TO VARIOUS INCIDENTS INVOLVING THE ACTUAL OR ALLEGED BRIBERY BY US CORPORATIONS ABROAD OF FOREIGN OFFICIALS IN THE COUNTRIES WHERE THEY ARE DOING BUSINESS. TO DATE, THE DEPT HAS BEEN REQUIRED TO DEAL WITH THE ALLEGED BRIBERY BY UNITED BRANDS OF HIGH OFFICIALS IN HONDURAS AND ALLEGATIONS RELATING TO PAYMENTS TO POLITICAL PARTIES IN VARIOUS COUNTRIES BY THE GULF OIL CORPORATION. THIS CABLE BRIEFLY SUMMARIZES FACTS IN THOSE CASES, INDICATES NATURE OF USG RESPONSES TO DATE, AND PROVIDES BACKGROUND INFORMATION TO BE USED BY AMBASSADORS AS NECESSARY IN DISCUSSION OF SUCH ISSUES WITH HOST  
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OFFICIALS.

2. UNITED BRANDS: IN LATE FEBRUARY THE DEPT OF STATE WAS CONTACTED BY LAWYERS FOR UB INDICATING THAT AN SEC AUDIT OF THE COMPANY'S BOOKS HAD DISCLOSED CERTAIN IRREGULAR

ENTRIES WHICH TURNED OUT TO BE CONCEALED PAYMENTS TO HIGH OFFICIALS OF THE GOVERNMENT OF HONDURAS. UB LATER ASKED THE DEPT TO COOPERATE IN THE FORMER'S EFFORTS TO PERSUADE THE SEC THAT THE CONFIDENTIALITY OF THE INFORMATION SHOULD BE PRESERVED. SPECIFICALLY WE WERE ASKED TO TESTIFY AT A

HEARING UNDER SEC REGULATIONS THAT THE FOREIGN RELATIONS INTERESTS OF THE UNITED STATES WOULD BE INJURED UNLESS THE INFORMATION WERE KEPT CONFIDENTIAL. THE DEPT DECLINED TO TESTIFY. IN A LETTER SENT TO UB'S COUNSEL ON APRIL 3, ASSISTANT SECRETARY ROGERS RESPONDED IN PART AS FOLLOWS:

QUOTE: THERE IS, AS YOU ARE AWARE, CONSIDERABLE PRESENT INTEREST IN LATIN AMERICA IN THE BEHAVIOR OF TRANSNATIONAL ENTERPRISES. IN RECENT YEARS THE UNITED STATES HAS PARTICIPATED IN DISCUSSIONS OF MULTINATIONAL CORPORATE ACTIVITY IN A VARIETY OF FORA. ALTHOUGH THERE ARE ISSUES WITH RESPECT TO MULTINATIONAL CORPORATE ACTIVITY ON WHICH THE UNITED STATES AND THE DEVELOPING COUNTRIES DISAGREE, THERE HAS BEEN NO SIGNIFICANT DISAGREEMENT ON THE PROPOSITION THAT MULTINATIONAL CORPORATIONS ENGAGING IN BUSINESS OPPORTUNITIES IN FOREIGN COUNTRIES MUST RESPECT THE LAWS OF THE NATIONS IN WHICH THEY OPERATE, CONSISTENT WITH INTERNATIONAL LAW, AND CONDUCT THEMSELVES AS GOOD CORPORATE CITIZENS OF THOSE NATIONS, REFRAINING FROM IMPROPER INTERFERENCE IN THEIR INTERNAL AFFAIRS. WE HAVE CONSISTENTLY INDICATED THAT WE CANNOT AND DO NOT COUNTENANCE ILLEGAL ACTIVITIES BY US ENTERPRISES ABROAD. THE ALLEGED ACTION OF UNITED BRANDS IN HONDURAS, IF IT OCCURRED, CLEARLY WOULD FALL WITHIN THE CATEGORY OF IMPERMISSIBLE ACTIVITY. THE UNITED STATES CONDEMNS SUCH ACTIONS BY U.S. CORPORATIONS IN THE STRONGEST TERMS. THEY COMPLICATE OUR RELATIONS WITH FRIENDLY FOREIGN CONFIDENTIAL

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GOVERNMENTS AND MAKE IT MORE DIFFICULT FOR THE UNITED STATES TO ASSIST OTHER U.S. FIRMS IN THE LAWFUL PURSUIT OF THEIR LEGITIMATE BUSINESS INTERESTS ABROAD. END QUOTE.

3. THE UNITED BRANDS MATTER BECAME PUBLIC KNOWLEDGE WHEN THE WALL STREET JOURNAL BROKE THE STORY A FEW DAYS LATER. JB THEN ACKNOWLEDGED PUBLICLY THAT \$1.25 MILLION HAD BEEN PAID TO A GOH OFFICIAL IN ORDER TO OBTAIN A FAVORABLE RESOLUTION OF THE BANANA TAX MATTER IN HONDURAS IN AUGUST 1974. IT WAS ANNOUNCED ALSO THAT PAYMENT OF AN ADDITIONAL \$1.25 MILLION, WHICH HAD BEEN AGREED TO, WOULD NOT BE MADE. A NUMBER OF LAW SUITS HAVE BEEN FILED AGAINST UB BY THE SEC OR ON BEHALF OF SHARE-

HOLDERS. THE GOVERNMENT OF HONDURAS APPOINTED AN INVESTIGATING COMMISSION TO LOOK INTO THE MATTER. THE REFUSAL OF PRESIDENT LOPEZ OF HONDURAS TO COOPERATE WITH THE COMMISSION WAS A CONTRIBUTING FACTOR TO THE DECISION OF THE HONDURAN ARMED FORCES TO REMOVE HIM FROM

OFFICE. THE COMMISSION LATER TRAVELED TO THE UNITED STATES WHERE IT RECEIVED THE FULL COOPERATION OF UNITED BRANDS, THE SEC, AND THE DEPARTMENT OF STATE. IT IS WORTH UNDERLINING THAT INITIAL DISCLOSURE OF THE ACTION WAS MADE BY THE WALL STREET JOURNAL, AND NOT BY ANY US GOVERNMENT AGENCY. UB THEN ISSUED ITS OWN CORROBORATING STATEMENT EVEN THOUGH ITS LEGAL OBLIGATION TO DISCLOSE SUCH INFORMATION HAD NOT YET BEEN DETERMINED.

4. GULF OIL: THE EVENTS BEGAN WITH A MAY 2 WALL STREET JOURNAL ARTICLE WHICH STATED THAT TOP GULF OFFICIALS HAD TESTIFIED TO THE SEC THAT POLITICIANS OF AN UNNAMED FOREIGN COUNTRY HAD COMPELLED THE COMPANY TO PAY \$4.2 MILLION IN ORDER TO STAY IN BUSINESS, WITH "HINTS" THAT LATIN AMERICAN POLITICAL FIGURES MAY HAVE BEEN INVOLVED. THE ARTICLE CREATED A PUBLIC FUROR IN VENEZUELA AND STRONG PRESSURE FOR PROMPT CLARIFICATION OF THE SITUATION BY GULF. ON MAY 6, A VENEZUELAN GOVERNMENT COMMUNIQUE GAVE MENE GRANDE, GULF'S 50 OWNED LOCAL SUBSIDIARY, 48 HOURS TO MAKE CLEAR PUBLICLY WHETHER OR CONFIDENTIAL

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NOT VENEZUELA WAS THE COUNTRY IN QUESTION, OR FACE SUSPENSION OF ITS ACTIVITIES UNTIL THE QUESTION WAS ANSWERED. AS STATED IN THE COMMUNIQUE, THE GOV ALSO SENT A DIPLOMATIC NOTE ASKING FOR USG GOOD OFFICES TO CLARIFY THE SITUATION. FYI: THE GOV DID NOT PUBLICLY REFER TO A PROVISION OF THE NOTE WHICH NOTED THAT SUCH A SUSPENSION WOULD REDUCE PRODUCTION AND SALE OF VENEZUELAN PETROLEUM, "THE PUNCTUAL SUPPLY OF WHICH TO ITS TRADITIONAL MARKETS IS THE OBJECTIVE OF THE VENEZUELAN GOVERNMENT." END FYI. THE IMMEDIATE CRISIS OVER THE 48-HOUR DEADLINE ENDED WITH A MAY 8 LETTER FROM GULF OIL PRESIDENT DORSEY TO PRESIDENT PEREZ - AN IDENTICAL LETTER WAS ALSO SENT TO THE ECUADOREAN PRESIDENT - STATING THAT VENEZUELA (ECUADOR) WAS NOT INVOLVED AND PROFOUNDLY REGRETTING THE CONCERN WHICH THE INCIDENT MAY HAVE CAUSED.

5. FYI: PRIOR TO THE RECEIPT OF THE LETTER, ECUADOREAN EMBASSY OFFICIALS TENTATIVELY SOUGHT THE ASSISTANCE OF THE SEC AND THE DEPT IN DETERMINING WHETHER ECUADOR WAS THE COUNTRY IN WHICH THE BRIBES WERE PAID. THE LETTER APPEARS TO HAVE SATISFIED THE GOE BUT THE GOE CONTINUES TO PRESS THE DEPT FOR ANY AVAILABLE INFORMATION. END FYI.

6. ON MAY 7 THE BOLIVIAN GOVERNMENT ANNOUNCED THAT IT WAS GIVING GULF OIL 48 HOURS TO INDICATE WHETHER BRIBES HAD BEEN PAID IN BOLIVIA; IN THE ABSENCE OF A RESPONSE THE GOV SAID IT WOULD SUSPEND THE PAYMENTS DUE UNDER

THE GULF EXPROPRIATION SETTLEMENT OF 1971. GULF INFORMED THE GOB ON MAY 9 THAT THE MATTER IS UNDER INVESTIGATION BY A SPECIAL REVIEW COMMITTEE AND THAT GULF WILL MAKE THE FACTS KNOWN TO THE GOB AS SOON AS THEY ARE AVAILABLE. IT ALSO STATED THAT BOLIVIA WAS NOT THE RECIPIENT OF THE \$4.2 MILLION BUT COULD NOT PROVIDE ASSURANCES THAT NO POLITICAL CONTRIBUTIONS HAD BEEN MADE IN BOLIVIA UNTIL THE INVESTIGATION IS COMPLETED. THE GOB HAS INDICATED ITS DESIRE FOR MORE INFORMATION FROM GULF, BUT HAS NOT SUSPENDED PAYMENTS PURSUANT TO THE SETTLEMENT. THE GOB ALSO REQUESTED THE DEPT TO UNDERTAKE AN INVESTIGATION OF THE MATTER. CONFIDENTIAL

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7. THE CONTEXT: THE DEPT APPRECIATES THE DILEMMA IN WHICH AMERICAN COMPANIES FREQUENTLY FIND THEMSELVES, A CULTURAL-POLITICAL ENVIRONMENT WHERE THEY MUST FUNCTION IN A CLIMATE WHERE BRIBES ARE HINTED AT, IF NOT OPENLY SOLICITED, OR NOT FUNCTION AT ALL. WHILE WE CANNOT CONDONE THESE ACTS, AT LEAST TO THE EXTENT THAT THEY ARE ILLEGAL UNDER LOCAL LAW, WE DO NOT WISH TO LOSE SIGHT OF THE FACT THAT THE SITUATION IS A DIFFICULT ONE FOR THOSE DIRECTLY CONCERNED. INVESTIGATIONS OF SUCH ACTIVITIES, BOTH BY THE SECURITIES AND EXCHANGE COMMISSION AND BY THE CHURCH SUBCOMMITTEE, COME AT A TIME OF GREATLY HEIGHTENED PUBLIC AND LEGISLATIVE EMPHASIS IN THE UNITED STATES ON OPENNESS IN PUBLIC AND CORPORATE LIFE. MOREOVER, IN AT LEAST A FEW CASES FOREIGN GOVERNMENTS HAVE FELT THAT THE PUBLIC DISCLOSURE OF THESE INCIDENTS IN THE US PRESS REFLECTED A USG DESIRE TO EMBARRASS THOSE GOVERNMENTS. THIS IS, OF COURSE, NOT THE CASE. RATHER, THE IMPETUS FOR THESE INVESTIGATIONS IS A RESULT OF DOMESTIC PRESSURES AND DOMESTIC ISSUES.

8. THE US GOVERNMENT POSITION: AS ASSISTANT SECRETARY ROGERS' LETTER INDICATES, THE UNITED STATES TAKES THE POSITION THAT IT WILL NOT CONDONE SUCH ACTIVITIES. WE ALSO BELIEVE THAT ANY US INVESTOR THAT MAKES UNLAWFUL PAYMENTS TO OFFICIALS OF A FOREIGN GOVERNMENT CANNOT LOOK TO THE STATE DEPT TO PROTECT IT FROM LEGITIMATE LAW ENFORCEMENT ACTIONS BY THE RESPONSIBLE AUTHORITIES OF THE HOST COUNTRY. ON THE OTHER HAND, WE DO NOT FEEL THAT BRIBERY PER SE GIVES A FOREIGN GOVERNMENT CARTE BLANCHE WITH RESPECT TO THE ACTIONS IT MAY DECIDE TO TAKE AGAINST THE FOREIGN COMPANIES INVOLVED. WE ENCOURAGE HOST COUNTRIES TO CLARIFY THE RULES THAT ENTERPRISES SHOULD

FOLLOW IN THEIR COUNTRIES REGARDING POLITICAL CONTRIBUTIONS AND OTHER PAYMENTS, BUT WE ASSUME THAT THE INVESTIGATION AND PROSECUTION OF SUCH OFFENSES BY FOREIGN AUTHORITIES WILL BE NON-DISCRIMINATORY AND THAT THE

PENALTIES WILL BE PROPORTIONATE TO THE OFFENSE. EVEN THOSE PERSONS OR FIRMS THAT MAY BE CHARGED WITH IMPROPER CONDUCT ARE ENTITLED TO BE TREATED FAIRLY AND IN CONFIDENTIAL

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ACCORDANCE WITH INTERNATIONAL LAW.

9. WE HAVE ALSO CONSISTENTLY EMPHASIZED THAT THESE MATTERS ARE ESSENTIALLY ISSUES BETWEEN THE US CORPORATION AND THE HOST COUNTRY, SUBJECT TO THE ABOVE LIMITATIONS. IN MOST CASES IT WILL BE UP TO THE HOST COUNTRY TO SEEK THE INFORMATION IT DESIRES FROM THE AMERICAN COMPANY. AS A GENERAL RULE THE DEPARTMENT OF STATE AND THE SEC ARE IN NO POSITION TO ACT AS THE AGENT OF DISCLOSURE OF A PARTICULAR INCIDENT, EVEN THOUGH IT IS POSSIBLE THAT SEC INVESTIGATIONS MAY EVENTUALLY PRODUCE INFORMATION OF USE TO FOREIGN GOVERNMENTS WHICH CAN LEGALLY BE COMMUNICATED TO THOSE GOVERNMENTS. THE SEC IS AN AUTONOMOUS USG ENTITY WITH SPECIFIC RESPONSIBILITIES AND INVESTIGATIVE AUTHORITY, THE LATTER LARGELY CENTERED ON PROTECTION OF US SHAREHOLDERS. POLITICAL CONTRIBUTIONS ABROAD AND PAYMENTS TO FOREIGN OFFICIALS ARE NOT VIOLATIONS OF US LAW AND RELATE TO SEC INVESTIGATIONS ONLY TO THE EXTENT THAT THE COMPANY IN REPORTING OR NOT REPORTING SUCH PAYMENTS HAS VIOLATED REGULATIONS. THE INFORMATION IN ITS POSSESSION MAY BE RESTRICTED BY LAW FROM DISCLOSURE. UNDER THESE CIRCUMSTANCES IT IS US POLICY TO AVOID BECOMING ACTIVELY INVOLVED WHEN THESE MATTERS ARISE BEYOND USE OF OUR GOOD OFFICES WHERE APPROPRIATE TO ASSURE THAT THE COMPANIES AND HOST GOVERNMENTS ARE COMMUNICATING WITH EACH OTHER.

10. A FURTHER PROBLEM FROM OUR POINT OF VIEW IS THE TENDENCY, IN PART UNDERSTANDABLE, FOR THE HOST GOVERNMENT TO RESORT TO THREATS OR EXTRA-LEGAL PROCEDURES WHEN RUMORS OF ILLEGAL ACTIVITY BECOME PUBLIC. MOREOVER, IN A FEW CASES IT IS PROBABLE THAT THE ILLEGAL ACTIVITY WILL BE USED AT LEAST INDIRECTLY AS THE BASIS OF IMPLIED THREATS TO THE USG WITH RESPECT, FOR EXAMPLE, TO THE CUTTING OFF OF USG ACCESS TO THE COMMODITIES PRODUCED BY THE COMPANIES ALLEGED TO HAVE ENGAGED IN THE ILLEGAL ACTIVITIES.

11. THE DEPT MADE A PUBLIC STATEMENT MAY 15 COVERING MOST OF THESE ISSUES (SEPTTEL). NO ACTION FROM YOU IS CONFIDENTIAL

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REQUIRED. HOWEVER, IN VIEW OF COMPLEX RELATIONSHIP THAT  
EXISTS BETWEEN THE DEPARTMENT; SEC, CONGRESS AND MULTI-  
NATIONAL ENTERPRISES IN THIS AREA; WE CONSIDER  
THIS IMPORTANT BACKGROUND MATERIAL TO BE DRAWN UPON AS  
NEEDED IN DISCUSSIONS WITH HOST GOVERNMENT. KISSINGER

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